

ARTICLE 42E

HARBORPARK DISTRICT

FORT POINT WATERFRONT

(Article inserted on January 28, 1991*)

TABLE OF CONTENTS

	<u>Page</u>
Section 42E-1 Statement of Purpose, Goals, and Objectives	5
42E-2 Recognition of the Harborpark District Plan	5
42E-3 Physical Boundaries	5
42E-4 Applicability	5
 TIDELANDS REGULATIONS	
Section 42E-5 Chapter 91 Requirements	8
1. Determination of Proper Public Purpose	
2. Public Access to the Waterfront and Open Space	
3. Creation of Housing on Land Not Owned by a Public Agency	
4. Creation of Housing on Land Owned by a Public Agency	
5. Provision for Water Transportation Facilities	
6. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures	
7. Regulations Governing Piers and Other Structures in the Fort Point Waterfront	
 OTHER REGULATIONS APPLICABLE IN THE FORT POINT WATERFRONT	
Section 42E-6 Open Space Requirements	15
42E-7 Waterfront Yard Area Requirements	16
1. Waterfront Yard Area Measurements	
2. Setback Requirements	
3. Exception to Waterfront Yard Area Setback Requirement	

**As amended through October 24, 2002.

*Date of public notice: December 17, 1990 (see St. 1956, c. 665, s. 5).

	<u>Page</u>
42E-8 Urban Design Guidelines	18
42E-9 Environmental Protection and Safety Standards for Proposed Projects	20
1. Waste Handling	
2. Area for Recyclable Materials	
3. Provision of Safety Ladders	
42E-10 Off-Street Parking	20
42E-11 Off-Street Loading.....	20
42E-12 Fort Point Waterfront: Maximum Allowed Building Height and Floor Area Ratio	21
42E-13 Transition Zones	21
1. Boston Wharf Transition Zone	
2. Waterfront Transition Zone	
3. Northern Avenue Transition Zone	
42E-14 Prohibition of Planned Development Areas; Combination of Parcels.....	22
42E-15 Establishment of Area Within Which Planned Development Area May Be Permitted.....	22
1. Consistency with Section 3-1A; Review and Approval Requirements	
2. Reconstruction of Pre-existing Structures	
42E-16 Planned Development Areas: Use and Dimensional Regulations	23
1. Use Regulations	
2. Dimensional Regulations	
3. Open Space Regulations	
4. Calculation of Open Space and FAR	
42E-17 Planned Development Areas: Standards for Development Plan Approval	24

42E-18	Planned Development Areas: Public Benefit Criteria	25
1.	Development Plan Approval for Creation of Affordable Housing	
2.	Development Plan Approval for the Provision of Street Improvements	
3.	Development Plan Approval for Development of New Usable Open Space in the Fort Point Waterfront	
4.	Development Plan Approval for the Expansion and Diversification of Boston's Maritime Industrial and Manufacturing Economies	
42E-19	Planned Development Areas: Recommendations from Community Groups and City Departments	27
42E-20	Planned Development Areas: General Design and Environmental Impact Standards	27
1.	Shadow Criteria	
2.	Wind	
3.	Transportation Access	
4.	Landmarks and Historic Buildings	
5.	Enhancement of Pedestrian Environment	
6.	Boston Civic Design Commission Review	
42E-21	Use Regulations Applicable in the Fort Point Waterfront	30
1.	Inclusion of Day Care Facilities	
2.	Facilities of Public Accommodation	
3.	Allowed Uses	
4.	Conditional Uses	
5.	Forbidden Uses	

MISCELLANEOUS PROVISIONS

Section	42E-22	Regulations	38
	42E-23	Rights to Navigation	38
	42E-24	Severability	38
	42E-25	Definitions	38

	<u>Page</u>
42E-26 Appendices	38
Appendix A - Definitions	
Appendix B - Water-Dependent Uses and Facilities of Public Accommodation	

(Editor's Note: This table of contents is added for the convenience of the user.
It has not been adopted as part of this Article.)

SECTION 42E-1. Statement of Purpose, Goals, and Objectives. The purpose of this Article is to establish the zoning regulations for the comprehensive plan for the Fort Point Waterfront within the Harborpark District as required by the provisions of the Harborpark Interim Planning Overlay District, Article 27C of this Code. Together with Articles 42A, 42B, and 42F, this Article establishes the Harborpark District. The goals and objectives of this Article and the Harborpark District Plan are to protect the Harborpark District from inappropriate land and water uses; to promote balanced growth along Boston's shoreline; to allow the waterfront to be used as a public resource and thereby to extend its use and benefit to the greatest number of people; to preserve and protect public open space and beach area within the harbor area; to promote public access to the waterfront; to promote residential and mixed-use commercial activities compatible with adjacent areas; to promote the economic growth and development of water-dependent and water-related commercial activity; to protect the working waterfront and preserve areas for water-dependent uses; to promote public waterborne transportation; and to promote uses which integrate uses, activities, and physical connections between the harbor and its surrounding neighborhoods.

SECTION 42E-2. Recognition of the Harborpark District Plan. In accordance with Section 27C-16 of this Code, which requires production of comprehensive planning policies, development controls, and design guidelines for the Harborpark District, the Zoning Commission hereby recognizes the Harborpark District Plan as the general plan for the Fort Point Waterfront within the Harborpark District. The Harborpark District Plan shall also serve as the portion of the general plan for the City of Boston applicable to the Fort Point Waterfront within the Harborpark District. The Harborpark District Plan incorporates the Fort Point Waterfront District Plan. This Article is an integral part of and one of the means of implementing the Harborpark District Plan, the preparation of which is pursuant to Section 70 of Chapter 41 of the General Laws, Section 652 of the Acts of 1960, and Section 3 of Chapter 4 of the Ordinances of 1952.

SECTION 42E-3. Physical Boundaries. The provisions of this Article are applicable only in the Fort Point Waterfront of the Harborpark District. The boundaries of the Fort Point Waterfront are as shown on the map entitled "Map 4A Harborpark District: Fort Point Waterfront and Dorchester Bay/Neponset River Waterfront (supplemental to 'Map 4 South Boston')," of the series of maps entitled "Zoning Districts City of Boston," as amended.

SECTION 42E-4. Applicability. This Article together with the rest of this Code constitutes the zoning regulation for the Fort Point Waterfront within the Harborpark District and applies to the use or occupancy of any structure or land (including submerged land and Tidelands) and the erection, reconstruction, extension, or alteration of any structure or part thereof as specified in Section 4-1 regarding the conformity of structures and land to this Code. Exceptions to the

provisions of this Article, pursuant to Article 6A, shall not be available except to the extent expressly provided in this Article or Article 6A. Application of the provisions of Article 27C to the Fort Point Waterfront within the Harborpark District is rescinded on the effective date of this Article, except as provided below. For the Fort Point Waterfront, except where specifically otherwise indicated in this Article, the provisions of this Article supersede Article 8 (except Section 8-6), Article 13 (except Section 13-3), and Articles 14 through 24, inclusive, of this Code. Where conflicts exist between the provisions of this Article and the remainder of the Code, the provisions of this Article shall govern. The following Proposed Projects, however, are exempt from the provisions of this Article and are governed by the rest of this Code:

1. Any Proposed Project for which application to the Inspectional Services Department for a building or use permit has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article and for which no Zoning Relief is required.
2. Any Proposed Project for which appeal to the Board of Appeal for any Zoning Relief has been made prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that such Zoning Relief has been or thereafter is granted by the Board of Appeal pursuant to such appeal.
3. Any Proposed Project for which application for approval of a development impact project plan, planned development area development plan, or planned development area master plan has been submitted to the Boston Redevelopment Authority prior to the first notice of hearing before the Zoning Commission for adoption of this Article, provided that:
 - (a) such development impact project plan, planned development area development plan, or planned development area master plan (i) does not elect, by its terms, to be governed by this Article, and (ii) has been or is thereafter approved by the Boston Redevelopment Authority pursuant to such application, whether or not such Proposed Project, such application or such development impact project plan, planned development area development plan, or planned development area master plan is thereafter modified or amended;
 - (b) no building in such Proposed Project exceeds a building height equal to the greater of (i) two hundred fifty (250) feet or (ii) with regard to a Proposed Project for which a planned development area development plan has been approved by the Boston Redevelopment Authority, such greater height as may be allowed by an exception granted pursuant to Article 6A, which

greater height shall not exceed the greatest building height permitted by such planned development area development plan at the time of the first notice of hearing before the Zoning Commission for adoption of this Article;

- (c) such Proposed Project shall be subject to the provisions of Section 42E-5; and
- (d) such Proposed Project shall be subject to the provisions of Sections 42E-7 and 42E-21(2), but only if and to the extent that (i) the use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), and 9.53(2)(c) are more restrictive than the requirements of Sections 42E-7 and 42E-21(2) and (ii) the requirements of Sections 42E-7 and 42E-21(2), pursuant to Code of Massachusetts Regulations title 310, Section 9.34(2)(b)(1), are substituted, as a part of the Harborpark District Plan, for the use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), and 9.53(2)(c) with regard to the Proposed Project.

The height restriction set forth in paragraph (b) immediately above and the provisions of Sections 42E-7 and 42E-21(2) shall be deemed part of the Harborpark District Plan as it applies to such Proposed Project, for the purposes of Code of Massachusetts Regulations title 310, Section 9.34(2)(b)(1), in connection with substitutions for use limitations and numerical standards set forth in Code of Massachusetts Regulations title 310, Sections 9.51(3)(b), 9.51(3)(c), 9.51(3)(e), and 9.53(2)(c).

TIDELANDS REGULATIONS

;SECTION 42E-5. **Chapter 91 Requirements.** In accordance with Chapter 91 of the General Laws of Massachusetts ("Chapter 91") and the regulations promulgated thereunder, certain Projects (as that term is defined below) located in Tidelands require a license ("Chapter 91 License") from the Commonwealth's Department of Environmental Protection ("DEP"). Section 18 of Chapter 91 requires that the planning board of a municipality in which a Project requiring a Chapter 91 license is located (i.e., the Boston Redevelopment Authority, in Boston) submit a written recommendation ("Section 18 Recommendation") stating whether the planning board believes the Project would serve a proper public purpose and would not be detrimental to the public's rights in Tidelands (the "Section 18 Standard"). Such a Section 18 Recommendation with respect to a Project requiring a Chapter 91 License and located in the Fort Point Waterfront within the Harborpark District shall be made by the Boston Redevelopment Authority in accordance with the provisions of Subsection 1 of this Section 42E-5. For the purposes of this Section 42E-5 only, the term "Project" shall mean a development, activity, or change of use requiring a Chapter 91 license.

1. Determination of Proper Public Purpose. The Boston Redevelopment Authority, in making a Section 18 Recommendation regarding a Project located in the Fort Point Waterfront within the Harborpark District, shall determine whether such Project serves a proper public purpose and would not be detrimental to the public's rights in Tidelands. The Boston Redevelopment Authority shall base such determination on the conformity of the Project to the provisions of Subsections 2 through 7 of this Section and on the extent to which the Project reasonably and appropriately preserves and enhances the public's rights in Tidelands including, without limitation, the public's:
 - (a) visual access to the water, whether such Project is for a Water-Dependent or non-Water-Dependent use on Private or Commonwealth Tidelands;
 - (b) rights to fishing, fowling, and navigation and the natural derivatives thereof, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Private or Commonwealth Tidelands;
 - (c) physical access to and along the water's edge for recreation, commerce, and other lawful purposes, and interest in public recreational opportunities at the water's edge and open space for public use and enjoyment, if such Project is for a Water-Dependent Use or non-Water-Dependent Use on Commonwealth Tidelands;

- (d) interest in the preservation of the historic character of the Project's site;
- (e) interest in industrial and commercial waterborne transportation of goods and persons;
- (f) interest in repair and rehabilitation of dilapidated piers that blight the Harborpark District and limit public access; and
- (g) interest in safe and convenient navigation in Boston Harbor, including without limitation:
 - (i) navigation by water transportation Vessels, such as ferries, water taxis, water shuttles, or commuter vessels, including, without limitation, appropriate and convenient navigation by such Vessels outside of the Main Shipping Channel and other established channels;
 - (ii) navigation by deep draft Vessels, including without limitation, appropriate navigation in the Main Shipping Channel and other established channels and the requirements of turning, anchorage, and approaches to deep water piers and berths;
 - (iii) navigation by Recreational Vessels and small Commercial Vessels outside of the Main Shipping Channel and other established channels as necessary or convenient for such vessels to avoid interference with water transportation Vessels and deep draft shipping and as otherwise required for the purposes of harbor traffic management; and
 - (iv) navigation, as appropriate to the site, by U.S. Coast Guard, U.S. Naval, police, fire, and other public safety Vessels.

2. Public Access to the Waterfront and Open Space. Public access to the waterfront and Open Space is a central policy of the Harborpark District Plan. Pursuant to this policy, the Boston Redevelopment Authority shall not make a positive Section 18 Recommendation with respect to a Project that the Boston Redevelopment Authority determines will significantly interfere with public rights to walk or otherwise pass freely on Commonwealth Tidelands for purposes of commerce, recreation, and all other lawful activities; or on Private Tidelands for purposes of fishing, fowling, navigation, and the natural

derivatives thereof. The Boston Redevelopment Authority shall find that the Section 18 Standard is not met if the Project does not comply with the following public access conditions:

- (a) To the extent that the Project site includes Flowed Private Tidelands, the Project shall allow continuous, on-foot, lateral passage by the public in the exercise of its rights therein, wherever feasible; any Pier, wharf, groin, jetty, or other structure on such Tidelands shall be designed to minimize interference with public passage, either by maintaining at least a five-foot clearance above the ground along the high water mark, by providing a stairway for the public to pass laterally over such structures, or by other means of lateral access substantially consistent with the foregoing; where obstruction of continuous access below the high water mark is unavoidable, the Project shall provide free lateral passage to the public above said mark in order to mitigate interference with the public's right to pass freely on Flowed Private Tidelands;
- (b) To the extent that the Project site includes Flowed or Filled Commonwealth Tidelands, or Filled Private Tidelands, the Project shall include reasonable measures to provide on-foot passage on such lands for the public in the exercise of its rights therein, in accordance with the following provisions:
 - (i) if the Project is not a Water-Dependent Use Project, said Project shall provide a public Pedestrian Access Network;
 - (ii) if the Project is a Water-Dependent Use Project, the Project shall provide for public passage by such means as are consistent with the need to avoid undue interference with the Water-Dependent Use or Uses in question and to avoid any safety hazard to people working on or visiting the Project site; measures which may be appropriate in this regard include, but are not limited to, allowing the public to pass laterally along portions of the Project shoreline or transversely across the site to a point on the Project shoreline;
- (c) All Open Space areas established pursuant to Section 42E-6 located on Commonwealth Tidelands and all Public Access Facilities described in paragraphs (a) and (b) of this Subsection 2 shall be open and accessible to the public twenty-four (24) hours a day. No gates, fences, or barriers may be placed on said Public Access Facilities or Open Space in a manner that would impede or discourage the free flow of pedestrian

movement thereon. The foregoing shall not be deemed to prohibit the placing of temporary barriers as required in emergencies or in connection with construction, maintenance, or the like, provided that interference with pedestrian access and passage is minimized to the extent reasonably practicable and consistent with public safety and that such barriers are in place no longer than necessary. All such Public Access Facilities shall be Accessible to Physically Handicapped Persons as those terms are defined in Section 30-2. Active pedestrian use of such Open Space areas and Public Access Facilities shall be encouraged on a year-round basis, particularly for water-related activities, through such means as appropriate ground level uses of adjacent buildings and facilities and amenities designed to be attractive to pedestrians. Maintaining, cleaning, landscaping, and managing such Open Space areas and pedestrian access facilities shall at all times be the responsibility of the Chapter 91 licensee of the Project. The Applicant for any Project subject to or electing to comply with Large Project Review shall include in the urban design component of its Draft Project Impact Report, submitted pursuant to Large Project Review, an Open Space and Public Access Plan, including plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management measures and access-related rules and regulations, if any, sufficient to permit the Boston Redevelopment Authority to determine the conformity of the Project to this Subsection 2 and Section 42E-6, and to make a Section 18 Recommendation.

- (d) Any Project required to provide Public Access Facilities in accordance with paragraph (b), above, shall encourage public patronage of such facilities by placing and maintaining adequate signage at all entryways and at other appropriate locations on the site; said signage shall:
 - (i) conform to Article 11, Signs, of the code;
 - (ii) conform, as applicable, to design guidelines for Harborwalk signage to be issued as regulations by the Boston Redevelopment Authority; and
 - (iii) include at least one sign, conforming to such design guidelines and placed in a prominent location, which advises the public of its access rights and discloses whatever access-related rules and regulations are in effect, if any.

3. Creation of Housing on Land not Owned by a Public Agency. In a Project to construct ten (10) or more dwelling units in the Harborpark District on a Lot not owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least ten percent (10%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent that such ten percent requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.2, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date. For the purpose of this Subsection 42E-5.3 and of Subsection 42E-5.4, space devoted to hotel uses shall not be deemed to be a dwelling unit.
4. Creation of Housing on Land Owned by a Public Agency. In a Project to construct four (4) or more dwelling units on a Lot that is owned by a Public Agency as of the date on which a Project Notification Form for the Project is filed, pursuant to Large Project Review, or if no Project Notification Form is required, as of the date on which a building permit application for the Project is filed, which Lot includes Commonwealth Tidelands, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless at least twenty-five percent (25%) of the dwelling units proposed on site shall be Affordable; or, subject to the approval of the Boston Redevelopment Authority, to the extent such twenty-five-percent (25%) requirement is not met, the Applicant shall create or cause the creation of Affordable dwelling units off site in accordance with Subsection 5 of this Section by making a dollar contribution to the Neighborhood Housing Trust or another entity designated by the Boston Redevelopment Authority, calculated by multiplying the total number of dwelling units in the Project by 0.5, and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of Article 42A, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date.

5. Provision for Water Transportation Facilities. To promote an effective water transportation system and to ensure use of the waterfront and full access to recreational, commuting, and economic activities, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met with respect to a Project located in the Fort Point Waterfront unless the Project conforms to the requirements for water transportation facilities set forth below, as applicable:
 - (a) Water Transportation Facility Requirement. In making a Section 18 Recommendation with respect to such a Project, the Boston Redevelopment Authority shall consider the extent to which provision is made on the Project site for waterborne passenger transportation facilities, including, without limitation, terminals and landings as appropriate to the use, scale, and location of the Project, for water ferries, water shuttles, or water taxis, and free public landings and in accordance with the water transportation guidelines of the Harborpark District Plan.
 - (b) Shoreline Construction. In order to provide appropriate docking areas for emergencies and other harbor activities, all portions of the shoreline of a Project consisting of seawalls, bulkheads, or Piers, which are restructured and which abut waters accessible by Vessels shall be constructed, to the extent reasonably practicable, in such a manner as can accommodate such Vessels alongside for dockage.
6. Uses Allowed in Tidelands Proposed to be Filled and on Floating Structures. No portion of a Project located on Tidelands which are filled after the date of the first notice of hearing before the Zoning Commission on this Article, shall be erected, used, or arranged or designed to be used (a) except for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the provisions of Article 6, or (b) except as otherwise provided below. In making a Section 18 Recommendation with respect to a Project involving such new fill, the Boston Redevelopment Authority shall find that the Section 18 Standard is not met unless such new fill is limited to the extent reasonably practicable by measures such as substituting pile-supported or floating structures for new fill or relocating the use to a position above the High Tide Line. The foregoing shall not, however, prohibit or limit the use of new fill the purpose of which is to eliminate irregularities in or repair previously altered portions of the shoreline included in the Project, provided that such new fill replaces previously authorized fill elsewhere along such shoreline on a one-to-one square foot basis (new fill to removed fill). The foregoing shall also not prohibit or limit the use of new fill the purpose of which is to

accommodate mechanical or structural elements of the Project that enter the seabed, such as, without limitation, elevator shafts, ventilation shafts, utility conduits, piles, or the like, provided that such fill is limited to that reasonably required under the circumstances and provided, further, that all such mechanical elements, structural elements, and fill are wholly contained within the edges of a Pier. Piles are not considered "fill" for the purposes of this Article. New fill, in any event, is prohibited in any area where Pier construction or extension is prohibited by this Code.

No floating structure, other than a Vessel, shall be used or arranged or designed to be used except for a Water-Dependent Use otherwise allowed for the location of such structure or conditionally permitted, subject to the provisions of Article 6.

7. Regulations Governing Piers and Other Structures in the Fort Point Waterfront. Within the Fort Point Waterfront, no portion of any Pier, other than an Existing Pier, shall be erected, used, or arranged or designed to be used except as publicly accessible Open Space or for a Water-Dependent Use otherwise allowed or conditionally permitted, subject to the requirements of Article 6, for the location pursuant to this Article.

(;As amended on May 9, 1996.)

OTHER REGULATIONS APPLICABLE IN THE FORT POINT WATERFRONT

SECTION 42E-6. Open Space Requirements. Any Proposed Project in the Fort Point Waterfront involving new construction at grade, except a Proposed Project with a gross floor area of 2,500 square feet or less used exclusively for one or more Water-Dependent Uses, shall provide Open Space as follows: North of the centerline of Northern Avenue, such a Proposed Project shall devote to Open Space at least fifty percent (50%) of the Lot Area of such Proposed Project. South of the centerline of Northern Avenue, such a Proposed Project shall devote to Open Space at least thirty percent (30%) of the Lot Area of such Proposed Project, provided that a Proposed Project located in a Planned Development Area may meet some or all of this Open Space requirement by causing or contributing to the creation of Open Space off site pursuant to the provisions of Subsection 42E-16.3 and provided, further, that the development plan for a Proposed Project located in a Planned Development Area may require that a greater portion than thirty percent (30%) of the Lot Area be devoted to Open Space. For the purposes of this Section 42E-6, "Northern Avenue" refers to the alignment of said street as it existed as of the effective date of this Article.

For the purposes of this Article, the term "Open Space" shall mean land areas and areas on Piers excluding (a) any area occupied by a building or roofed structure; (b) any parking lot or parking area at grade; (c) any street; (d) any private road or area devoted to motor vehicle use; (e) any salt-water area below the mean high tide line, other than areas on Piers; (f) any fresh water area more than ten (10) feet from the shoreline; (g) marina slips or floats or other floating structures; (h) swimming pools; and (i) tennis courts.

The foregoing notwithstanding, the following areas shall be deemed "Open Space":

- (u) any area on top of a building or other structure, if such area is landscaped and usable as Open Space and is directly accessible to the public from an elevated public way twenty-four hours a day. Such area shall not be deemed "directly" accessible if the grade change between the area and such public way exceeds three (3) feet.
- (v) any area occupied by a building not exceeding a Building Height of fifteen (15) feet and a gross floor area of four hundred (400) square feet and reserved exclusively for use as a Water-Dependent Use or a recreational use permitted as a conditional use pursuant to Subsection 42E-21.4(a);
- (w) any area occupied by a street or private way open only to pedestrians and emergency vehicles;

- (x) any area at grade, pedestrian-accessible to members of the public twenty-four (24) hours per day, covered by a weather-protective enclosure or roof structure, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A. For the purposes of this clause (x), Open Space shall not include any such area covered by a portion of a building, which portion is used or designed to be used for human occupancy or which contains or supports mechanical equipment principally serving portions of the building other than the enclosed Open Space area;
- (y) any area, at grade, otherwise meeting the definition of Open Space, as set forth in this Section, but covered by a pedestrian skywalk or skybridge, provided that an exception allowing the designation of such area as Open Space is granted by the Board of Appeal, subject to the requirements of Article 6A;
- (z) any area beneath an archway, which archway is not less than forty (40) feet wide at grade and forty (40) feet high at its apex and open at both ends.

All Open Space areas shall be Accessible to Physically Handicapped Persons, as those terms are defined in Section 30-2. The foregoing shall not prohibit occasional access to or over Open Space by service vehicles reasonably required to construct or maintain the structures on the Lot or by emergency vehicles. However, routine access to or over Open Space areas by vehicles transporting, loading, or unloading passengers or supplies for the normal operation of buildings and uses is not consistent with the foregoing definition.

SECTION 42E-7. Waterfront Yard Area Requirements. Except as otherwise expressly provided in this Article, each Lot in the Fort Point Waterfront adjacent to or including the High Tide Line and seaward of the first public way inland from the High Tide Line shall include a Waterfront Yard Area adjacent to and landward of such High Tide Line, excluding portions of the High Tide Line occupied by Piers. A Waterfront Yard Area shall also be required along the edges of any Pier. The required Waterfront Yard Area landward of the High Tide Line and the required Waterfront Yard Area on Piers shall be connected so as to provide a continuous path along the waterfront, with a minimum width at the places of connection of no less than twelve (12) feet. The dimensions of the required Waterfront Yard Area are set forth in Table A of this Article.

TABLE A

Required Depth of Waterfront Yard Area

<u>Location</u>	<u>Required Setback (Shoreline, excluding Piers)</u>	<u>Required Setback (Sides of Piers)</u>	<u>Required Setback (Ends of Piers)</u>
Fort Point Waterfront	50'	12'	50'

The provisions of Article 6A shall be applicable to the Waterfront Yard Area requirement. The following additional provisions shall apply to the Waterfront Yard Area requirement:

1. Waterfront Yard Area Measurements. The depth of the Waterfront Yard Area shall be measured perpendicularly from the High Tide Line in the case of bulkheads, rip rap, fill, or shoreline and perpendicularly from the Ends and Sides of Piers. In locating the Waterfront Yard Area, the actual High Tide Line may be smoothed with such curves and chords as may be necessary to achieve a reasonably regular landward boundary. However, in no instance shall the Waterfront Yard Area be narrower than the required dimension measured perpendicularly from the actual High Tide Line. For the limited purpose of applying the Waterfront Yard Area Requirements of this Article, Pier 4 along its westerly Side (but no farther than the commencement of the filled areas extending westward from said Pier 4) and along its easterly Side, from the end of the Pier to Northern Avenue, shall be treated as a Pier. The Sides and the End of Pier 5 (Commonwealth Pier) are not located in the Fort Point Waterfront but are located in the adjacent South Boston Maritime Economy Reserve Subdistrict. All other waterfront within the Fort Point Waterfront shall be treated as "shoreline, excluding Piers."
2. Setback Requirements. No portion of any building or structure (including, without limitation, mechanical facilities associated with a building) shall be located in any Waterfront Yard Area, except walkways, landscape furniture, guardrails, cleats, bollards, pilings, boat ramps, and other structures (a) which do not materially interfere with pedestrian use of the Waterfront Yard Area or (b) which are required for operational or safety reasons to be located at the water's edge, provided that any resulting interference with pedestrian use of the Waterfront Yard Area is minimized to the extent economically practicable.

3. Exception to Waterfront Yard Area Setback Requirement. Any building or structure used for a Water-Dependent Use, including, without limitation, drydocks, enclosed or covered wet dock sheds, davits, hoists, mast markers, and the structures listed in Subsection 2 above, shall be permitted within the Waterfront Yard Area as necessary to avoid interference with any direct access to the water required for such Water-Dependent Use.
4. No portion of any Waterfront Yard Area shall be located on any floating structure.

;SECTION 42E-8. **Urban Design Guidelines.** This Section 42E-8 establishes urban design guidelines for the Fort Point Waterfront of the Harborpark District. In addition to such guidelines, the urban design guidelines set forth in the Harborpark District Plan for the Fort Point Waterfront, approved by the Boston Redevelopment Authority on December 13, 1990, ("Fort Point Guidelines"), as the same may be amended from time to time, apply within the Fort Point Waterfront of the Harborpark District. The design guidelines established by this Section 42E-8 are as follows:

1. New development and rehabilitation shall reinforce the traditional pattern, height, and massing of the urban waterfront.
2. Buildings and spaces shall direct views and pedestrian movements towards the water.
3. Buildings on Piers shall be sited so as to reinforce the geometry of the Pier; and buildings near the water's edge shall not be massed so as to create a continuous wall along the water's edge.
4. Inland buildings shall reinforce the city street pattern and avoid continuous walls parallel to the water's edge by maintaining view and access corridors, especially at cross-streets.
5. Buildings shall be sited to provide view and access corridors towards the open water and to preserve views from Public Access Facilities and Open Space areas at the Ends of Piers. Open archways spanning a view corridor, which archways are not less than forty (40) feet wide at grade and forty (40) feet high at the apex and are oriented and designed to preserve the view corridor, as determined through design review, shall not be deemed inconsistent with this design guideline.
6. Building elements on a site shall generally step down in height towards the water's edge.

7. Open areas and buildings at or near the Ends of Piers shall offer opportunities for public views of the water and public amenities that attract the public to the water's edge.
8. Building massing shall enhance the air flow channels created by sea breezes that are beneficial to air quality in the City.
9. Open spaces, building entrances, shopfronts, shop windows, shop entrances, terraces, gardens, arcades, and similar elements shall be designed to enhance pedestrian activity, access to, and enjoyment of the waterfront. Blank walls, without windows or entrances facing onto pedestrian areas, shall be avoided to the extent practicable in building designs.
10. Facade treatment, building materials, and design details shall complement the traditional character of Boston's historic waterfront development patterns.
11. Setbacks, corner treatments, and other design details shall be used to minimize the sense of bulk of structures, and ornamental and decorative elements appropriate to the urban and historical waterfront context are encouraged.
12. Roofs of buildings shall be designed to minimize the visibility of roof structures and penthouses normally built above the roof and not designed to be used for human occupancy.
13. A Proposed Project should promote and enhance the quality of the pedestrian environment, by means such as: (a) pedestrian pathways connecting to the waterfront and, where appropriate, linking the waterfront and mass transit stations; (b) spaces accommodating pedestrian activities and public art; (c) use of materials, landscaping, public art, lighting, and furniture that enhance the pedestrian and waterfront environment; (d) pedestrian systems that encourage more trips on foot to replace vehicular trips; (e) other attributes that improve the pedestrian environment and pedestrian access to the waterfront and Boston Harbor; and (f) appropriate management and maintenance of pedestrian access within the Proposed Project.
14. In addition to the foregoing, design features of a Proposed Project shall take into consideration the characteristics of the site and its location in the Harborpark District, shall provide opportunities for special amenities, such as panoramic views of the Harbor, and shall enhance and reinforce any historic qualities of existing structures.

New development shall be consistent with design guidelines established in the Harborpark District Plan.

(;As amended on May 9, 1996.)

;SECTION 42E-9. **Environmental Protection and Safety Standards for Proposed Projects.** Any Proposed Project involving new construction in the Fort Point Waterfront within the Harborpark District shall conform to the environmental protection and safety standards established in this Section, to the extent economically practicable, as determined in Large Project Review.

1. Waste Handling. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include a trash compactor or comparable facility for waste disposal management in an interior location and shall provide for the maintenance and cleanliness of such facility.
2. Area for Recyclable Materials. Any such Proposed Project with a gross floor area of fifty thousand (50,000) or more square feet shall include an interior area for the separation, temporary storage, and collection of recyclable materials. Such area shall be located in the vicinity of any off-street loading facility.
3. Provision of Safety Ladders. Any such Proposed Project, if adjacent to the water, shall provide a safety ladder or ladders extending from the water to an accessible area above the high water mark such that there shall be one safety ladder located approximately every one hundred (100) feet along those portions of the waterfront occupied by seawalls, piers, wharves, or other structures otherwise inaccessible to a person in the water. The foregoing notwithstanding, a safety ladder shall not be required in a location that would unreasonably interfere with docking facilities or other Water- Dependent Use, provided that safety ladders are placed at intervals most closely approximating one hundred (100) feet and not so interfering.

(;As amended on May 9, 1996.)

SECTION 42E-10. **Off-Street Parking.** As provided in Section 42E-21.4(c), parking garages and parking lots are conditional uses. Within a Planned Development Area, off-street parking shall be provided as set forth in the Development Plan approved for such Planned Development Area.

;SECTION 42E-11. **Off-Street Loading.** Within the Fort Point Waterfront, no off-street loading facilities shall be required for any Proposed Project with a gross floor area of less than ten thousand (10,000) square feet. For any Proposed Project with a gross floor area of ten thousand (10,000) or more square feet, the Applicant shall include in its Project Impact Report, prepared for

Large Project Review, an analysis of the loading requirements of the Proposed Project and of the impacts of projected loading activities, together with a description of any off-street loading facilities required to meet those requirements and to mitigate, to the extent economically practicable, projected impacts, and the Boston Redevelopment Authority shall determine the adequacy of such proposed loading facilities in accordance with Large Project Review.
(;As amended on May 9, 1996.)

;SECTION 42E-12. **Fort Point Waterfront: Maximum Allowed Building Height and Floor Area Ratio.** Except as otherwise may be allowed within a Planned Development Area established in accordance with Section 42E-15 and Section 3-1A of this code and except as otherwise provided in Section 42E-13, pertaining to transition zones, a Proposed Project within the Fort Point Waterfront is allowed a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of three (3); provided that any Proposed Project shall have a maximum building height of one hundred fifty-five (155) feet if such Proposed Project is subject to or shall elect to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6.

(;As amended on May 9, 1996.)

;SECTION 42E-13. **Transition Zones.** This section establishes two "transition zones" within the Fort Point Waterfront Subdistrict. These transition zones are established in order to mediate the height of buildings between higher density areas and lower density or open space areas. The transition zones are located as designated on Map 4A of this Code.

1. Boston Wharf Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Boston Wharf Transition Zone," Proposed Projects are limited to a maximum building height of one hundred twenty-five (125) feet and a maximum FAR of four (4).
2. Waterfront Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Waterfront Transition Zone," Proposed Projects are limited to a maximum building height of fifty-five (55) feet and a maximum FAR of three (3).
3. Northern Avenue Transition Zone. Within that portion of the Fort Point Waterfront depicted on Map 4A as the "Northern Avenue Transition Zone," Proposed Projects are limited to a maximum building height of seventy-five (75) feet and a maximum FAR of three (3), except for the improvements referred to on Page 2 of Exhibit C of the Planned Development Area dated March 16, 1995, for Planned Development Area No. 40.

(;As amended on March 27, 1996.)

SECTION 42E-14. Prohibition of Planned Development Areas; Combination of Parcels. Within the Fort Point Waterfront, no Planned Development Area as that term is used in Section 3-1A.a shall be permitted except as expressly permitted in this Article. Within the Fort Point Waterfront, parcels may be combined to form a single Lot notwithstanding that said parcels are separated by a street.

SECTION 42E-15. Establishment of Area within Which Planned Development Areas May Be Permitted. This section establishes one area within which Planned Development Areas ("PDAs") may be permitted within the Fort Point Waterfront. The purposes for establishment of the area within which PDAs may be permitted are: to establish a more flexible zoning law and encourage large-scale private redevelopment of the vacant areas in the Fort Point Waterfront while insuring high-quality design by providing planning and design controls; to provide a secure economic base for the downtown services, industrial, and waterfront economy; and to encourage development which knits together the surrounding neighborhoods. See Article 80 concerning the applicability of Planned Development Area Review.

1. Consistency with Section 3-1A; Review and Approval Requirements. The area in the Fort Point Waterfront within which PDAs may be permitted is designated on Map 4A of this Code as the "PDA Permitted Zone." No PDA is permitted within the Fort Point Waterfront except within the PDA Permitted Zone. Any application for development approval for a Proposed Project within the PDA Permitted Zone is subject to the provisions of this section and Sections 42E-16 through 42E-20, in addition to the provisions of Subsection 3-1A.a. See Article 80 concerning the applicability of Planned Development Area Review.
2. Reconstruction of Pre-existing Structures. A Proposed Project for the reconstruction of a structure in existence in a PDA as of the date of Development Plan approval and described in said Development Plan, or of a structure constructed pursuant to said Development Plan, shall be determined by the Boston Redevelopment Authority to be consistent with said Development Plan, provided that said reconstruction is substantially similar to the original structure. Said reconstruction, unless described as part of the original Proposed Project in said Development Plan, shall constitute a separate Proposed Project for all purposes hereunder.

(;As amended on May 9, 1996.)

;SECTION 42E-16. **Planned Development Areas: Use and Dimensional Regulations.** The land use and dimensional regulations for PDAs are established by this section.

1. Use Regulations. Proposed Projects within PDAs are subject to the use regulations set forth in Section 42E-21, except to the extent that the same are expressly modified by an approved Development Plan.
2. Dimensional Regulations. Proposed Projects within a PDA shall comply with the following FAR and building height standards. The maximum allowed building height and FAR for any such Proposed Project shall be as set forth in Sections 42E-12 and 42E-13 for Proposed Projects not located in PDAs, except that:
 - (a) within that certain area designated on Map 4A as the "PDA Height Zone," the maximum allowed building height within a PDA shall be one hundred fifty-five (155) feet and the maximum allowed FAR shall be four and one-quarter (4.25); provided that any such Proposed Project shall be allowed a maximum building height in Substantial Accord with two hundred fifty (250) feet if such Proposed Project is subject to or has elected to comply with Large Project Review and has received a Certification of Compliance pursuant to Section 80B-6; and
 - (b) within that certain area designated on Map 4A as the Northern Avenue Transition Zone, the maximum allowed building height shall be as set forth in Section 42E-13.3 and the maximum allowed FAR shall be four and one-quarter (4.25).
 - (c) within that certain area designated on Map 4A as the "PDA Open Space Zone," only Open Space shall be permitted, as that term is defined in Section 42E-6 (subsection (u) of said Section 42E-6 being deemed inapplicable for the purposes of this Section 42E-16.2 only).
3. Open Space Regulations. A Proposed Project within a PDA shall comply with the provisions of Section 42E-6 regarding the provisions of Open Space; provided that, in lieu of the provision of Open Space on site, the Development Plan and any associated Cooperation Agreement with the Boston Redevelopment Authority may require the project proponent to acquire, construct, and maintain publicly-accessible Open Space outside of the project site, provided that such Open Space is:
 - (a) located inside the "PDA Permitted Zone;"

- (b) designated and located consistently with the open space and other provisions of the Harborpark District Plan as it pertains to the Fort Point Waterfront;
 - (c) comparable in size and quality of location to the Open Space that would otherwise be required to be located on the project site;
 - (d) otherwise satisfies the Design Component of Large Project Review and the standards for Planned Development Area Review approval, pursuant to Section 80C-4; and
 - (e) with the consent of the owner(s), is designated as an Open Space Subdistrict, pursuant to the provisions of Article 33.
4. Calculation of Open Space and Far. In the case of a Proposed Project within a PDA, Open Space and FAR, for purposes of this Article and Section 42E-16, shall be computed as though the land which is the subject of an approved Development Plan were in single ownership, notwithstanding actual ownership patterns or changes in ownership occurring after the date of approval of the Development Plan. In the event that an approved Development Plan is amended to add additional site area to the Proposed Projects, Open Space and FAR may, at the election of the project proponent, be computed on an aggregate basis for all of the land governed by such amended Development Plan, provided that, as of the date of any such computation, all such land is common ownership. If the proponent of a Proposed Project located on land owned by a public agency or such public agency constructs or causes the construction of a public street within said land at no cost or expense to the City of Boston, the Boston Redevelopment Authority, or any city department or agency, in accordance with the terms of an approved Development Plan, then the area of such public street may be included in the Lot Area for the limited purpose of computing FAR. Off-street parking located in a building or structure beneath or adjacent to an elevated roadway or viaduct and permitted in an approved Development Plan shall not be included in said FAR computation.

(;As amended on May 9, 1996.)

;SECTION 42E-17. **Planned Development Areas: Standards for Development Plan Approval.** For approval standards for Planned Development Area Development Plans, see Section 80C-4 (Standards for Planned Development Area Review Approval).

(;As amended on May 9, 1996 and July 31, 1997.)

SECTION 42E-18. Planned Development Areas: Public Benefit Criteria. The Boston Redevelopment Authority may approve a Development Plan as meeting the requirement of Section 80C-4 (Standards for Planned Development Area Review Approval) for compliance with the applicable planning and development criteria of this Article if the Development Plan proposes a plan for public benefits, consistent with the Fort Point Waterfront District Plan, including, at a minimum, one of the following: (a) the creation of Affordable housing in accordance with the provisions of subsection 1, below, of this section; (b) the provision of substantial street improvements in accordance with the provisions of subsection 2, below, of this section; (c) the provision of Open Space in accordance with the provisions of subsection 3 of this section; or (d) the provision of economic support in accordance with the provisions of subsection 4 of this section.

1. Development Plan Approval for Creation of Affordable Housing. The Boston Redevelopment Authority may approve a Development Plan proposing to construct or cause the construction of housing if: (a) at least twenty percent (20%) of the gross floor area proposed to be newly constructed (as distinct from refurbished or rehabilitated) as part of the Proposed Project is devoted to Residential Uses; and (b) either (i) at least ten percent (10%) of the new dwelling units proposed in the Development Plan on site are Affordable; or (ii) the Applicant causes the creation, rehabilitation, or preservation of Affordable dwelling units off site by making a dollar contribution to the Neighborhood Housing Trust, or another entity acceptable to the Boston Redevelopment Authority, of not less than an amount calculated by multiplying the total number of dwelling units to be constructed as part of the Proposed Project by 0.2 and multiplying the result by the average per-unit assistance granted by the Neighborhood Housing Trust for the twelve (12) months prior to the effective date of this Article, and multiplying that result by the ratio of the then Index to the Index in effect as of such effective date. On-site Affordable dwelling units shall be comparable in size, appearance, and quality to other dwelling units within the Proposed Project.
2. Development Plan Approval for the Provision of Street Improvements. The Boston Redevelopment Authority may approve a Development Plan providing, either directly or through funding, for substantial street improvements to streets adjacent to and in the vicinity of the PDA. Such street improvements must be consistent with any applicable street improvement regulations or guidelines and must be sufficient, as determined by the Boston Redevelopment Authority, to improve the appearance, condition, quality of design and materials, and accessibility and usability of the affected streets by pedestrians and

general vehicular traffic, taking into account increased vehicular and pedestrian flows.

3. Development Plan Approval for Development of New Usable Open Space in the Fort Point Waterfront. The Boston Redevelopment Authority may approve a Development Plan proposing to develop or to cause the development of a usable Open Space in the Fort Point Waterfront additional to that otherwise required pursuant to Section 42E-6 if: (a) either (i) the new usable Open Space is of a useful condition, size, and type which is appropriate, under the circumstances pertaining at the time of the application for Development Plan approval, to contribute to the balance of built and Open Space responsive to the needs of the Fort Point Waterfront; or (ii) the Development Plan details provision of sufficient assistance for successful development of usable Open Space, including provision of assistance for maintenance, programming, or other assistance; and (b) the Applicant provides evidence of a long-term commitment by the Applicant itself or a third party either (i) to maintain the Open Space or (ii) to lease or otherwise transfer such Open Space for such use and maintenance (which may include a lease or transfer to the City of Boston or its designee). Plans, drawings, specifications, descriptions of proposed uses, and descriptions of proposed management areas and access-related rules, if any, pertaining to such Open Space shall be included in the Open Space and Public Access Plan required pursuant to Subsection 42E-5.2(c).
4. Development Plan Approval for the Expansion and Diversification of Boston's Maritime Industrial and Manufacturing Economies. The Boston Redevelopment Authority may approve a Development Plan that provides for direct economic support for the maritime-industrial economy or for the manufacturing economy. The project proponent must demonstrate that such support or assistance will significantly contribute to the creation of new jobs in the maritime-industrial or manufacturing economies or to the retention of such jobs that would otherwise be lost. Such support and assistance may include, but shall not be limited to: (a) provision of land or facilities, consistent with otherwise applicable regulations of this code, to a maritime-industrial or manufacturing operation below market cost; (b) sponsorship of one or more vocational education programs servicing the needs of the maritime-industrial or manufacturing economies; or (c) sponsorship of an information, outreach, and/or education program designed to increase the participation of Boston residents in the maritime-industrial or manufacturing economies.

(;As amended on May 9, 1996.)

;SECTION 42E-19. **Planned Development Areas: Recommendations from Community Groups and City Departments.** See Section 80C-5.3 (BRA Procedures for PDA Review: Public Notice and Comment) concerning procedures for public notice and comment in the review of a Development Plan.

(;As amended on May 9, 1996 and July 31, 1997.)

;SECTION 42E-20. **Planned Development Areas: General Design and Environmental Impact Standards.** In addition to the Large Project Review requirements set forth in Article 80 of this Code, Proposed Projects submitted as part of an application for Development Plan approval under Planned Development Area Review shall comply with the general design and environmental impact standards described herein. Compliance with these additional standards shall be determined through Large Project Review. The purpose of these additional standards is to maintain and improve the quality of life in the Fort Point Waterfront.

1. Shadow Criteria. Each Proposed Project shall be arranged and designed in a way to minimize to the extent reasonably practicable shadows on any portion of dedicated public parkland and publicly accessible open space. Shadow studies shall be conducted in connection with any Proposed Project demonstrating compliance with the foregoing standard.
2. Wind. Buildings shall be designed to avoid excessive and uncomfortable downdrafts on pedestrians. Each Proposed Project shall be shaped, or other wind-baffling measures shall be adopted, so that the Proposed Project will not cause ground-level ambient wind speeds to exceed the standards in Table B of this Article.

TABLE B

Pedestrian Safety/Comfort Wind Standards

<u>Activity Area</u>	<u>Effective Gust Velocity*</u>	<u>Permitted Annual Occurrence Frequency</u>
Limit for All Pedestrian Areas	13.8 m/sec (31 mph)	1%
Major Walkways - Especially Principal Egress Path for High-Rise Buildings	13.8 m/sec	1%
Other Pedestrian Walkways - Including Street and Arcade Shopping Areas	11.2 m/sec (25 mph)	5%
Open Plazas and Park Areas, Walking and Strolling Areas	6.3 m/sec (14.1 mph)	15%
Open Plaza and Park Areas, Open-Air Restaurants	4.0 m/sec (9 mph)	20%

* The effective gust velocity (egv) is defined as $egv = U + 1.5 fvc$, where U is the mean windspeed at a particular location and fvc is the root mean square of the fluctuating velocity component measured at the same location over the same time interval.

3. Transportation Access. Each Proposed Project that is subject to Large Project Review shall be subject to a Transportation Access Plan providing for effective transportation access and mitigation measures designed to minimize adverse traffic impacts on the Fort Point Waterfront and surrounding neighborhood and improve traffic flow and access within the affected area, such as measures designed to increase use of mass transit and other transportation alternatives to single-occupancy vehicles. Such Transportation Access Plan shall also provide for effective parking management measures to minimize adverse parking effects within the Fort Point Waterfront and surrounding neighborhood. The Boston Redevelopment Authority shall not issue an Adequacy Determination approving the Final Project Impact Report under Large Project Review for such a Proposed Project containing office, research center, local retail/service, and/or general retail uses (as those terms are further described in Section 42E-21) totaling two hundred fifty (250,000) or more square feet of gross floor area, unless the Transportation Access Plan for such Proposed Project reasonably demonstrates that a vehicle trip generation rate of one (1.0) vehicle per hour per one thousand (1,000) square feet of such uses, in the aggregate, will not be exceeded during the morning peak hours of 7:00 a.m. to 9:30 a.m.
4. Landmarks and Historic Buildings. Each Proposed Project shall generally be designed and arranged in such a way as to limit the reduction of light and air surrounding Landmarks and Historic Buildings and to minimize the shadow impact on their facades.
5. Enhancement of Pedestrian Environment. Each Proposed Project shall enhance the pedestrian environment, by means such as:
(a) pedestrian pathways connecting to mass transit stations;
(b) spaces accommodating pedestrian activities and public art;
(c) materials, landscaping, public art, lighting, and furniture that enhance the pedestrian environment; (d) interior retail uses;
(e) pedestrian systems that encourage more trips on foot; (f) sidewalk and street improvements that improve pedestrian flow and increase pedestrian safety on sidewalks and crosswalks; (g) other attributes that improve the pedestrian environment and pedestrian access to mass transit stations; (h) appropriate management and maintenance of public space within the Proposed Project; and (i) exterior or interior pedestrian passageways.
6. Boston Civic Design Commission Review. In addition to complying with the above standards, each Proposed Project shall be subject to review by the Boston Civic Design Commission, in accordance with the provisions of Article 28.

(;As amended on May 9, 1996.)

↔SECTION 42E-21. **Use Regulations Applicable in the Fort Point Waterfront.** No land (including Tidelands and submerged land) water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, within the Fort Point Waterfront, except in conformity with the provisions of this Section and Section 8-6, subject to any modifications to such provisions as may expressly be set forth in the approved Development Plan for a Proposed Project located within a PDA.

1. Inclusion of Day Care Facilities. The provisions of this Subsection 1 apply only to Proposed Projects in the Fort Point Waterfront that exceed a Building Height of fifty-five (55) feet, or an FAR of two (2), or both. Any such Proposed Project having a gross floor area, not including floor area devoted to Residential Uses, Hotel Uses, or Community Uses and Cultural Facilities, which equals or exceeds one hundred thousand (100,000) square feet, shall devote to day care facilities an amount of floor area equal to at least the amount listed below in Table C of this Article. An Applicant for a Proposed Project subject to the provisions of this Subsection 1 may fulfill its obligations under this paragraph by either (a) creating such facilities on site; or (b) creating such facilities, or causing such facilities to be created elsewhere in the City. The provision of day care facilities in accordance with this Subsection 1 shall be in conformity with written regulations to be adopted by the Boston Redevelopment Authority after public notice and hearing. For the purposes of this paragraph, the term "day care facilities" includes the finish, furnishings, and equipment required for use of the floor area for such facilities, to enroll people for care, instruction, or recreation during regular business hours. Such day care facilities provided as part of a Proposed Project shall not be included in the calculation of FAR for the Proposed Project.

TABLE C

Provision of Day Care Facilities

Size of Proposed Project* (Gross Floor Area)	Minimum Day Care Facilities (Gross Floor Area)
100,000 up to 200,000 sq.ft.	2% of gross floor area
200,000 up to 500,000 sq.ft.	4,000 sq.ft.
500,000 up to 1,000,000 sq.ft.	8,000 sq.ft.
More than 1,000,000 sq.ft.	12,000 sq.ft.

* Excluding floor area devoted to Residential, Hotel, or Community Uses and Cultural Facilities.

2. Facilities of Public Accommodation. Within any Proposed Project in the Fort Point Waterfront with a gross floor area of ten thousand (10,000) or more square feet, involving new construction or a change of use on the first story, the use of at least forty percent (40%) of the gross floor area of the first story of such Proposed Project shall be for indoor Facilities of Public Accommodation, otherwise allowed for such Proposed Project or conditional and permitted pursuant to Article 6.

3. Allowed Uses. Within the Fort Point Waterfront, except as otherwise provided in this Section 42E-21, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use except in accordance with the provisions of this Subsection 3 and Subsection 4 of this Section 42E-21. Any use specified in this Subsection 3 is allowed as a matter of right, subject to the requirements set forth in the description of such use below.

(a) Water-Dependent and Water-Related Uses

(i) Water-Dependent Uses.

Dock, slip, pier, wharf, anchorage, or moorage for Commercial Vessels and Recreational Vessels awaiting servicing, provisions, on or off loading of people or cargo at delivery;
Water-Dependent recreational facility, Recreational Marina, facilities for the use, hire or charter of Commercial vessels, Boat Rental Establishment, recreational sailing or boating school, yacht club;

Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;

Aquarium, including uses reasonably appurtenant thereto such as gift shop, laboratory space, classrooms, restaurant, and food service uses, office space, conference facilities, meeting rooms;

Other cultural, educational, research, or training facilities dedicated primarily to marine purposes, or water-oriented exhibits;

Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;

Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;

Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, wave deflectors, and the like.

(ii) Water-Related Uses

Installation, repair, or servicing of boating accessories, marine equipment, marine instruments, or marine motors;

Chandlery, woodworking shop, electrical shop, or similar use for the repair and maintenance of Vessels;

Sale of marine hardware, or boating or diving supplies and equipment.

(b) Open Space/Recreational Uses

Open space for active or passive recreational use or dedicated to the conservation of natural resources, including but not limited to the waterways areas, beaches, reservations, parks, public gardens, and playgrounds; nonprofit sailing center or other public recreational facility operated by a nonprofit organization; publicly accessible garden conservatory or botanical garden.

(c) Community Uses and Cultural Facilities

Library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit open to public generally;

Community center or community service facility;
Day care center.

(d) Residential Uses

Multifamily residential uses;
Group residence, limited, as defined in clause (22B) of Section 2-1;
Convalescent, nursing, or rest home.

(e) Hotel Uses

Hotel, conference and meeting facilities, restaurant, lounge, bar, store primarily serving the retail needs of hotel, conference, and meeting guests, health club, swimming pool, parking garage, storage and office use accessory to hotel use.

(f) Office Uses

Office of professional persons, not accessory to a main use;
Real estate, insurance, financial service institution, or other agency or government office;
Office or display or sales space of a wholesale, jobbing, or distributing house, provided that the office or display or sales space of the wholesale, jobbing, or distributing house is associated with a Water-Dependent Use;
Office building, post office, bank (other than drive-in bank), or similar establishment.

(g) Research Center Uses

Laboratories and facilities for teaching and for theoretical, basic, and applied research, product development and testing, prototype fabrication, or production of experimental products; the keeping of marine life or laboratory animals incidental to a research or development use; storage and office use accessory to a research or development use;
Design, development, manufacture, compounding, packaging, processing, fabrication, altering, assembly, repair, servicing, renting, testing, handling, or transfer of products as would be included in research and development uses, consistent with the provisions of Subsection 36-4.1.

(h) Local Retail/Service Uses

Store primarily serving the local retail business or service needs of the neighborhood and harbor/waterfront users, including but not limited to chandlery, barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or drycleaner, tailor shop, hand laundry;

Store retailing one or more of the following but not limited to: food, baked goods, groceries, drugs, tobacco products, clothing, drygoods, books, film, video, art, flowers, paint, hardware, and small household appliances.

(i) General Retail Uses

Department store, furniture store, general merchandise mart, or other store serving the general retail business needs of a major part of the city, including accessory storage, provided that any Proposed Project for a general retail use shall be conditional if it: (a) establishes an occupancy for a general retail use having a gross floor area of seventy-five thousand (75,000) or more square feet; or (b) changes to a general retail use the use of a gross area of seventy-five thousand (75,000) or more square feet; or (c) enlarges a general retail use so as to result in a total gross floor area of seventy-five thousand (75,000) or more square feet.

(j) Restaurant Uses

Lunchroom, restaurant, cafeteria, or other place for the service or sale of food or drink for on-premises consumption, including outdoor cafes;

Place for sale and consumption of food and beverages (other than drive-in restaurants) providing dancing or entertainment or both;

Pushcart food vendors.

(k) Educational Uses

Marine research and/or training institute for educational institution provided that water access is required for the facility or its operation.

(l) Amended to Conditional Use on October 20, 2000.

(m) Transportation Uses

Public transportation facility, bus station, trolley station.

(n) Place of Worship

Place of worship; monastery; convent; parish house.

(o) Exhibition and Conference Use

Exhibition hall, conference center, meeting facilities, auditorium.

(p) Art Uses/Artists' Mixed Use

(q) Fish Processing Use

Fish processing facility and accessory wholesale and retail sale of fish and fish products.

(r) Accessory and Ancillary Uses

Any of the following uses accessory or ancillary to an allowed use, subject to the limitations and restrictions of Article 10:

- (i) any use accessory or ancillary to, and ordinarily incident to, a lawful main use; provided that such use is not specifically forbidden in the district; and provided further that any such use shall be subject to the same restrictions, conditions, limitations, provisos and safeguards as the use to which it is accessory;
- (ii) an office, within a main building, of an accountant, architect, attorney, dentist, physician, or other professional person who resides in such building;
- (iii) an occupation for profit customarily carried on in a dwelling unit by a person residing therein provided that such occupation is carried on in a main building and requires only equipment ordinarily incident to a dwelling unit and that no nonresident help is employed and that there is no trading in merchandise;
- (iv) the keeping of marine life or laboratory animals incidental to a lawful educational, research center, aquarium, or institutional use;

- (v) as accessory uses to hotel uses, restaurants, conference facilities, retail and service establishments serving guests and visitors and other uses incidental to the operation of a hotel;
- (vi) as accessory uses to research center uses, restaurant, office, and other uses incidental to the operation of such research center uses;
- (vii) the storage of flammable liquids and gases incidental to a lawful use;
- (viii) permanent dwellings for personnel required to be resident on a Lot for the safe and proper operation of a lawful main use;
- (ix) day care center;
- (x) health club facility, tennis court, swimming pool.

4. Conditional Uses. Within the Fort Point Waterfront except as otherwise provided in this Section 42E-21, no land (including Tidelands and submerged land), water area, or structure shall be erected, used, or arranged or designed to be used, in whole or in part, for any use, specified in this Subsection 4, unless the granting of a permit for any use so specified is authorized conditionally by the Board of Appeal acting under the provisions of Article 6, subject to the regulations set forth in this Subsection 42E-21.4, or allowed by the Zoning Commission in its approval of a Development Plan for a PDA. To the extent that any use which is approved under a Development Plan for a PDA is a conditional use, either under this Article or under any other provision of the Code, the approval of the Boston Redevelopment Authority and the Zoning Commission of such Development Plan shall constitute approval of such conditional use and no further approval thereof shall be required from the Board of Appeal.

(a) Open Space/Recreational Uses

Recreational building (other than a nonprofit sailing center, other public recreational facility operated by a nonprofit organization, or publicly-accessible garden conservatory or botanical garden) on an Open Space area that is necessary and/or appropriate to the enhanced enjoyment of the particular Open Space area and is open to the public.

(b) Take-out Restaurant

In a structure, sale over the counter, not wholly incidental to a local retail business or restaurant use, of food or drink prepared on premises for off-premises consumption or for on-premises consumption if, as so sold, such food or drink is ready for take-out.

(c) Parking Uses

Parking garage or parking lot.

(d) Public Service Uses (subject to St. 1956, Chapter 665, Section 2)

Public service pumping station, public service substation, automatic telephone exchange, fire station, police station, telecommunications data distribution center;

Flood, water level, or tidal control facility;

Cable conduit, pipeline crossing, stormwater outlet, or other similar utility structure.

(e) Storage of dumpsters not accessory or ancillary to a main use, nor used in conjunction with the ongoing operation of a permitted site with explicit legal use and occupancy as a dumpster repair facility, waste hauling contractor yard, or site assigned and licensed solid waste management facility.

(f) Pawnshops

(g) Body Art Establishment

5. Forbidden Uses. Any use not specified as an allowed or conditional use in this Section 42E-21, except for such nonconforming uses as may be allowed to continue under the provisions of Article 9, shall be forbidden uses in the Fort Point Waterfront. Without limitation, uses described in Use Items No. 34A and No. 38A of Table A of Section 8-7 shall be forbidden uses in the Fort Point Waterfront. In addition, and notwithstanding any contrary provision hereof, any use of a floating structure, other than for a Water-Dependent Use, is forbidden in the Fort Point Waterfront.

(;As amended on February 22, 1991, September 30, 1993, October 6 and December 19, 1994, November 21, 1996, July 31, 1997, May 30, 2000, September 18 and October 20, 2000, February 16 and April 9, 2001.)

MISCELLANEOUS PROVISIONS

SECTION 42E-22. **Regulations.** The Boston Redevelopment Authority may promulgate regulations to administer this Article.

SECTION 42E-23. **Rights to Navigation.** No provision of this Code shall be construed as a limitation upon the navigational rights of vessels or upon the regulation thereof by the United States.

SECTION 42E-24. **Severability.** The provisions and requirements of this Article are severable, and if any such requirements or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision or requirement of this Article.

SECTION 42E-25. **Definitions.** Words and phrases defined in Appendix A to this Article, when capitalized in this Article, shall have the meanings set forth in said Appendix A.

SECTION 42E-26. **Appendices.** The following appendices are hereby made part of this Article:

Appendix A - Definitions.

Appendix B - Water-Dependent Uses and Facilities of Public Accommodation.

APPENDIX A to ARTICLE 42E

Definitions

For the purposes of Article 42E only, the following words and phrases, when capitalized, shall have the meanings indicated. Words and phrases not herein defined but defined Article 2 shall have the meanings indicated in Article 2.

1. "Adjusted Income" is defined as it is in 24 CFR 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-5.
2. "Affordable" means, in the case of an owner-occupied dwelling unit, requiring the expenditure by a Low-Income, Moderate-Income, or Upper Moderate-Income Household for mortgage and insurance payments, real estate taxes, and condominium fees of not more than thirty percent (30%) of its Adjusted Income to occupy the unit, and, in the case of a renter-occupied dwelling unit, requiring the expenditure by a Low-Income or Moderate-Income Household or Upper-Moderate Income Household for rent payments of not more than thirty percent (30%) of its Adjusted Income to occupy the unit.
3. "Annual Income" is defined as it is in 24 CFR 813.106, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-5.
4. "Applicant" means any person or entity having a legal or equitable interest in a Proposed Project subject to the provisions of this article, as set forth in Section 42E-4 or the authorized agent of any such person or entity.
5. "Art use" means the creation, manufacture, or assemblage of visual art, including two- or three-dimensional works of fine art or craft, or other fine art objects created, manufactured, or assembled for the purpose of sale, display, commission, consignment, or trade by artists or artisans; or classes held for art instruction.
6. "Artists' mixed-use" means the use of all or a portion of a building for both art use and habitation.
7. "Boat Rental Establishment" means any use or establishment that involves the renting, hiring, or instruction in the use of any sailboat, rowboat, or other Recreational Vessel that does not require an operator's license by the United States Coast Guard or the conferring of seasonal use privileges in a fleet of such Recreational Vessels.

APPENDIX A to ARTICLE 42E (continued)

8. "Building Height," notwithstanding the provisions of clause (23) of Section 2-1, means (a) for a flat roof, the vertical distance from the grade to the top of the highest point of the roof beams excluding mechanical roof structures and penthouses normally built above the roof and not used or designed to be used for human occupancy, and (b) for a pitched roof, the vertical distance from grade to the lower (i) of the mean level of the highest gable or of the slope of a hip roof or (ii) of the top of the structure of the highest occupied floor. A mansard roof shall be considered a flat roof. For Piers, grade shall be measured from the top of the deck of the Pier. In the Fort Point Waterfront, mechanical roof structures and penthouses normally built above the roof and not used or designed for human occupancy shall be excluded in calculating Building Heights.
9. "Bulkhead" means a vertical structure used to create an edge between the land and the water against which Vessels can be placed to unload or engage in other activities.
10. "Chapter 91" means M.G.L. Chapter 91 and implementing regulations, codified as of the effective date of this Article at 310 C.M.R. 9.00, as said statute and regulations may, from time to time, be amended.
11. ["Development Plan"]. Deleted on May 9, 1996 by Text Amendment No. 229.
12. "End" of a Pier means the edge of the Pier that is most nearly opposite the edge connecting the Pier with dry land and most nearly parallel to the 1880 Harbor Line or, if the 1880 Harbor Line is not applicable, the general direction of the shoreline.
13. "Existing Pier" means a Pier existing as of the date of the first notice of hearing for the adoption of this Article before the Zoning Commission.
14. "Facility of Public Accommodation" means a use so described in Appendix B.
15. "FAR" means floor area ratio, as defined in Section 2-1, subject to the provisions of Sections 15-1 and 42E-16.4 regarding calculation of the area of the Lot.
16. "Filled Tidelands" means former submerged lands and tidal flats which are no longer subject to tidal action due to the presence of fill.

APPENDIX A to ARTICLE 42E (continued)

17. "Flowed Tidelands" means present submerged lands and tidal flats which are subject to tidal action at the time of license application under Chapter 91.
18. "Fort Point Waterfront" means the area within the boundaries established on the map entitled "Map 4A Harborpark District: Fort Point Waterfront" of the series of maps entitled "Zoning Districts City of Boston," as amended.
19. "Harborpark District" means the Charlestown Waterfront, the Fort Point Waterfront, the North End/Downtown Waterfront, and the Dorchester Bay/Neponset River Waterfront.
20. "Harborpark District Plan" means the plan of the same name adopted or to be adopted by the Boston Redevelopment Authority.
21. "High/Low Tide Line" means the present arithmetic mean of the water heights observed at high or low tide, as applicable, over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch) and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.
22. "Historic Building" means any building listed from time to time in the Massachusetts Register of Historic Places.
23. "Index" means Consumer Price Index for all Urban Consumers, Boston, MA, all items - Series A (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor or, in the event such Consumer Price Index ceases to be published by the United States Department of Labor, a similar published index measuring consumer price levels in the Boston Metropolitan Area, as designated by the Boston Redevelopment Authority.
24. "Landmark" means any building or structure from time to time designated a landmark pursuant to Chapter 772 of the Acts of 1975, as amended.
25. "Lot", notwithstanding the provisions of clause (26) of Section 2-1, means a parcel of land, including land under water (a) whether or not platted, (b) in common control and combined for a single Proposed Project or in single ownership, and (c) except as otherwise provided in Section 42E-14, not divided by a street.
26. "Lot Area", notwithstanding the provisions of clause (27) of Section 2-1, means the horizontal area of the Lot exclusive (a) of any area in a street, (b) of any area in a private way devoted to public use by motor vehicles,

APPENDIX A to ARTICLE 42E (continued)

(c) of any fresh water area more than ten (10) feet from the shoreline, and
(d) of any salt water area below the High Tide Line. The foregoing notwithstanding, (x) the horizontal area of any Pier located in the Lot and (y) a private way open to vehicles for the purpose of accessing the Lot only and a street or private way open only to pedestrians and emergency vehicles shall be included in the Lot Area. Further, if a Proposed Project shall result in a net reduction in the horizontal area of Piers on the Lot, then Lot Area shall be computed on the basis of the horizontal area of said Piers as of the commencement of the Proposed Project.

27. "Low-Income Household" means any household whose Annual Income does not exceed fifty percent (50%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
28. "Main Shipping Channel" means the shipping channel for deep draft vessels in the Boston Inner Harbor as depicted by dashed lines on that certain chart issued by National Oceanic and Atmospheric Administration as chart number 13272 and entitled "Boston Inner Harbor," 39th Edition, dated November 24, 1984.
29. "Marina Amenity Uses" means those uses identified as such in Subsection 42B-14.5.
30. "Maritime Economy Reserve Subdistrict" means a subdistrict subject to the provisions of this Code applicable within an MER district.
31. "Median Gross Income" is defined as it is by the United States Department of Housing and Urban Development, pursuant to 24 CFR Section 813.102, as amended, or as set forth in regulations adopted in accordance with Subsections 42E-3 or 42E-4.
32. "Moderate-Income Household" means any household whose Annual Income does not exceed eighty percent (80%) of the Median Gross Income of households in the Boston Standard Metropolitan Statistical Area.
33. "Natural High/Low Tide Line" means the historic high/low tide line that would be observed except for alteration of the shoreline by filling, dredging, or impounding.
34. "Open Space" has the meaning set forth in Section 42E-6.
35. "Pedestrian Access Network" means a pedestrian network of a kind and to a degree that is appropriate for the site and consisting of, at a minimum:

APPENDIX A to ARTICLE 42E (continued)

- (i) walkways and related facilities along the entire length of the shoreline, and along the edges of any Piers or filled areas, which walkways shall be no less than twelve (12) feet in width; and
 - (ii) appropriate connecting walkways that allow pedestrians access to shoreline and Pier walkways from public ways or other Public Access Facilities to which any Commonwealth Tidelands or Private Tidelands on the site are adjacent.
36. "Pier" means any structure that extends seaward of the High Tide Line, but excluding any floating structure.
37. "Pierhead Line" means the seaward limit of Pier construction as established in applicable law of the Commonwealth of Massachusetts.
38. "Private Tidelands" has the meaning ascribed in Chapter 91.
39. "Proposed Project" means the substantial demolition, erection, or extension of any structure or part thereof, or the change or extension of use of any structure or land (including submerged land and Tidelands), for which the Applicant is required to obtain a building or use permit. A Proposed Project may be built in phases and may include separate or connected building elements on the same Lot.
40. "Public Access Facility" means a facility for pedestrian access to and/or along the waterfront, as provided in clauses (a) and (b) of Subsection 42E-5.
41. "Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the Commonwealth of Massachusetts, or one or more political subdivisions of the Commonwealth, or of the United States. For the purposes of this article, the Commonwealth's proprietary interest in Tidelands shall not constitute "ownership" by a Public Agency.
42. "Public Boat Ramp" means any ramp structure that provides public access to or egress from the water for Vessels.
43. "Recreational Marina" means any arrangement of docks, slips, Piers, pilings, moorings, or other facilities in or adjacent to the water, for use primarily by Recreational Vessels, including, but not limited to, any such facility associated with a yacht club or boat club.

APPENDIX A to ARTICLE 42E (continued)

- 44. "Seasonal Dry Storage" means the storage of Recreational Vessels on land for periodic use in the water during the active boating season, generally from April through October.
- 45. "Sides" of a Pier means the edges of the Pier other than the edge connecting the Pier with dry land and other than the End of the Pier.
- 46. "Substantial Accord" means, with respect to building height, that the vertical distance from grade to the top of the structure of the last occupied floor of a Proposed Project shall not exceed the specified height limit for the applicable district or subdistrict by more than the lesser of (i) nine (9) feet or (ii) two-thirds of the average floor-to-floor height of the building, excluding the ground floor. "Substantial Accord" shall not be interpreted as allowing a Proposed Project to exceed the maximum permitted FAR.
- 47. "Tidelands" means present and former submerged lands and tidal flats lying between the Natural High Tide Line and the seaward limit of state jurisdiction.
- 48. "Underlying Zoning" means all zoning regulations, with the exception of this article, which are contained in this code.
- 49. "Upper-Moderate Income Household" means any household whose Annual Income does not exceed 110% of the Median Gross Income of Households in the Boston Standard Metropolitan Statistical Area.
- 50. "Vessel" means any watercraft, including, but not limited to, a Commercial Vessel or Recreational Vessel, but not including any floating structure permanently moored or attached to land or a Pier.
- 51. "Vessel, Commercial" means any Vessel used for the principal purpose of engaging in a water-related commercial activity, including, but not limited to, charter boat, fishing boat, tug boat, cruise boat, freighter, or barge.
- 52. "Vessel, Recreational" means any Vessel used principally for recreational purposes.
- 53. "Water-Dependent Commercial Use" means a use described in Subsection 42D-3.1(b).
- 54. "Water-Dependent Use" means those uses described as such in Appendix B to this Article 42E.

APPENDIX A to ARTICLE 42E (continued)

- 55. "Water-Dependent Facility of Public Accommodation" means a Facility of Public Accommodation that is also a Water-Dependent Use.
- 56. "Waterfront Yard Area" has the meaning ascribed in Section 42E-7.
- 57. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

APPENDIX B to ARTICLE 42E

Water-Dependent Uses and Facilities of Public Accommodation

Water-Dependent Uses

Water-Dependent industrial uses;
Facilities for fishing, swimming, diving, and other water-based recreational activities;
Parks, esplanades, boardwalks, and other pedestrian facilities that promote public use and enjoyment of the water and are located at or near the water's edge;
Aquariums and other cultural, educational, research, or training facilities dedicated primarily to marine purposes or water-oriented exhibits;
Aquaculture facilities;
Navigation aids, marine police and fire stations, and other waterways public safety and law enforcement facilities;
Shore protection structures, such as seawalls, bulkheads, revetments, dikes, breakwaters, rip rap, water deflectors, and the like;
Waterborne passenger transportation facilities, such as those serving ferries, cruise ships, commuter and excursion boats, and water shuttles and taxis;
Marinas, boat basins, Boat Rental Establishments, boating or sailing school, channels, storage areas, and other facilities and establishments for commercial or recreational boating.

Facilities of Public Accommodation

A "Facility of Public Accommodation" means a facility, including a commercial facility, at which goods or services are made available directly to the general public. Facilities of Public Accommodation include, but are not limited to:

Lunch room, restaurant, cafeteria or other place for the service or sale of food or drink for on-premises consumption, provided that there is no dancing nor entertainment other than phonograph, radio, and television;
Place for sale and consumption of food and beverages (other than drive-in restaurant) providing dancing or entertainment or both, provided that such establishment is customarily open to the public at large and does not exclude any minor by reason of age as a prevailing practice;
Theater;
Lobbies and public areas of a hotel or motel;
Library, museum, aquarium, educational, historical, or cultural institution open to the public;

APPENDIX B to ARTICLE 42E (continued)

Adult education center, community center, or other interior space dedicated to the programming of community meetings, informational displays, special recreational events, or other public activities;

Store primarily serving the local retail business needs of the residents of the neighborhood, including, but not limited to, store retailing one or more of the following: food, baked goods, groceries, drugs, tobacco products, clothing, dry goods, books, flowers, paint, hardware, and minor household appliances, but not including packaged alcoholic beverages;

Department store, furniture store, general merchandise mart, or other store serving general retail business needs of a major part of the city, including accessory storage;

Barber shop, beauty shop, shoe repair shop, self-service laundry, pick-up and delivery station of laundry or dry-cleaner, or similar use;

Tailor shop or hand laundry;

Caterer's establishment, photographer's studio, upholsterer's shop, carpenter's shop, or electrician's shop;

Day care facility;

Sports or physical fitness facility open to the public; and

Interior facility for waterborne public transportation facilities, recreational marina, boat rental establishment, recreational sailing or boating school, or other recreational boating facility or establishment.